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Chapter 3
Enforcement

POLICY AND PROCEDURE
ARRESTS

I. **PURPOSE:**

The purpose of this policy is to provide guidelines to Newtown Police Personnel, with basic guidelines for conducting arrests.

II. **POLICY:**

It is the policy of this department that all arrests made by departmental personnel shall be conducted professionally and in accordance with established legal principles. In furtherance of this policy, all officers of this department are expected to be aware of, understand, and follow the laws governing arrest and detention. Police Officers are obliged to keep themselves apprised of new statutes, this policy, public acts, current federal and state court decisions and shall apply said to any investigation they are participating in. This policy sets forth the fundamentals of the arrest procedure.

III. **DEFINITIONS:**

- A. *Arrest:* Taking a person into custody.
- B. *Arrest Warrant:* A written order issued by a judge, magistrate, or other proper authority that commands a law enforcement officer to place a person under arrest.
- C. *Probable Cause for Arrest:* The existence of facts and circumstances that would lead a reasonably prudent officer to believe that a person had committed a criminal offense.
- D. *Investigative Detention:* Temporary detention for investigative purposes of a person based upon reasonable suspicion that the person has committed a criminal offense.
- E. *Reasonable Suspicion:* The degree of suspicion of criminal activity that justifies an investigative detention, but not an arrest.
- F. *Citizen Contact:* A consensual encounter between a police officer and a citizen that may be initiated by the officer for any reason and during which the citizen is free to leave at any time.
- G. *Exigent Circumstances:* Conditions, facts, or events that call for immediate aid of action. Law enforcement officers invoke “exigent circumstances” in cases where they will be unable or unlikely to make an arrest or search and seizure for which probable cause exists unless they act swiftly and without seeking prior judicial authorization. Such emergency situations are those that “would cause a reasonable person to believe

that entry (or relevant prompt action) was necessary to prevent physical harm to the officers or other persons, the destruction of relevant evidence, the escape of a suspect, or some other consequence improperly frustrating legitimate law enforcement efforts.”
(*United States v. McConney*, 728 F.2d 1195, 1199 (9th Cir.), cert. Denied, 469 U.S. 824, 105 S. Ct. 101 (1984))

- H. Weapons Display: Drawing a handgun or readying a shotgun or similar firearm for quick use if needed without pointing at a suspect.

IV. **PROCEDURES:**

A. Basis for Arrest

Officers shall conduct arrests only when based upon one of the following:

1. Probable Cause
2. An Arrest Warrant

B. Probable Cause

Probable cause for arrest may be established by one of the following:

1. Observations of the Officer
2. Information or evidence obtained during an investigative detention (*Terry* stop) or during a consensual citizen contact.
3. An identified citizen’s specific complaint.
4. Information provided by a police informant of proven reliability.
5. Information provided by other law enforcement sources.

Note: Officers shall **not** make any arrest based solely upon the following:

- a. Information received from an anonymous source.
- b. Mere suspicion, not amounting to probable cause.

C. Arrest Warrants

1. Except when a warrantless arrest is justified by the existence of probable cause, arrests shall be made under an arrest warrant.
2. Arrest warrants shall be obtained from the judge, magistrate, or other legal authority empowered to issue such warrants in this jurisdiction.
3. Such warrants shall be in the form prescribed by the law of this jurisdiction and shall adequately identify the person to be arrested. The warrant shall also provide such other information as is required by law.
4. Any officer to whom an arrest warrant is delivered shall examine it to ensure that it is in proper form, that all information required by law is provided and that the warrant is valid on its face. The officer shall also take note of any restrictions placed upon the arrest by the language of the warrant.
5. Once received, an arrest warrant shall be executed without delay, except as otherwise may be required by the circumstances of the case.

6. No arrest shall be made at a time or in a manner contrary to any express limitations upon the scope or language of the warrant.
7. In addition, no arrest shall be made in a manner or at a time or place prohibited by any of the following:
 - a. Departmental regulation
 - b. State or local legislation
 - c. Applicable court decisions (Supreme Court, Federal or State)

D. Arrest Procedures

1. Wherever possible, arrests shall be planned in advance in consultation with a Supervisor or other experienced officers.
2. Where advance planning and consultation is not possible, the arrest shall be made in accordance with the arresting officer's departmental training in arrest procedures.
3. The arresting officers shall identify themselves, inform the suspect of his or her arrest, and specify the charges for which the arrest is being made. Officers not in uniform shall display their shields and credentials when making the arrest to ensure proper identification.
4. Officer shall use only that level of force that they reasonably believe is necessary to make an arrest in accordance with this department's use-of-force policy (# 3-4)
5. Weapons shall be displayed during an arrest only where it is reasonably believed necessary to ensure the safety of the officers or others and the successful completion of the arrest. Pointing a firearm at a suspect is governed by this agency's use of force policy. (# 3-4)
6. Officers shall approach every arrest situation with the knowledge that any arrest, regardless of the offense involved may present an element of danger. Therefore, officers making arrests shall take all reasonable precautions to ensure the safety of the arresting officers. These precautions shall include the following:
 - a. Restraint of the arrestee (see below)
 - b. Search of the arrestee (see below).
 - c. Protective sweeps of the premises or area where the arrest occurs to ensure that no other persons or weapons are present that may represent a danger to the officers or the arrestee.
7. Following the arrest, officers shall not normally permit arrestees to leave the immediate area of the arrest for personal purposes (e.g., to get a coat). In exceptional cases where it is deemed necessary to grant the arrestee's request, the arrestee shall first be searched for weapons and then accompanied and closely monitored by the arresting or other officers.

E. Location of Arrest

1. Whenever possible, arrests shall be made in a location where the arrest will not pose a threat to the safety of the public (e.g., crowded places where bystanders may be injured)

should the arrestee offer resistance, particularly resistance involving the use of firearms.)

2. No officer shall enter premises owned or occupied by a third person to make an arrest unless the officer has a separate legal basis for entering the premises. Such a basis may be provided by any of the following:
 - a. Possession by the officer of a search warrant for those premises.
 - b. Consent of a person empowered by law to give such consent.
 - c. Exigent circumstances.

F. Restraint of Arrestees

1. All arrested persons shall be handcuffed after being taken into custody, except as otherwise provided by departmental policy (See Department Policies # 3-4, & # 3-13)
2. Other lawful forms of restraint may be used when necessary and reasonably available for the safety of officers, prisoners, and others.

G. Post-Arrest Protection of Officers, Arrestees, Victims and Bystanders.

1. Officers shall be aware that, following an arrest, they are legally responsible for the safety of the arrestee, any victims present and all bystanders. Therefore, officers shall take all steps reasonably necessary to protect:
 - a. The officer from the arrestee,
 - b. Victims and third persons from the arrestee, and
 - c. The arrestee from self-injury or injury by others. In particular, officers shall not allow victims into close proximity with the arrestee and shall not allow the arrestee out of their immediate presence for any reason until the arrestee is properly secured and transported.

H. Search Incident to Arrest

1. Officers shall conduct a thorough search of the person arrested.
2. Any criminal evidence discovered during the search of the arrestee's person shall be seized and preserved in accordance with standing departmental procedures. (See Department Policy on Evidence # 6-0)
3. The search incident to arrest shall include not only the person of the arrestee, but also areas within the reach and control of the arrestee.
4. Strip searches shall not be conducted in the field except under the most extreme circumstances and with prior approval from a supervisor. Any officer conducting a strip search of an arrestee in the field shall be prepared to justify the reasons for such a search and to document those reasons in a subsequent written report. (See Department Policy on Strip Searches # 2-3)
5. Body cavity searches shall not be conducted in the field. (See Department Policy on Strip Searches # 2-3)

6. Whenever possible, searches incident to arrest shall be conducted by officers of the same gender as that of the person being searched [regardless of LGBT claim](#).

I. Mirandizing Arrestees

1. Arrestees shall be advised of their Miranda rights before any questioning.
2. A waiver of the Miranda rights must be obtained before any questioning of an arrestee.
3. If the arrestee has not waived his or her Miranda rights, no questioning shall be conducted beyond that necessary to accomplish the booking procedure (name, address, etc.).
4. If the arrestee declines to waive his or her Miranda right to counsel, or if the arrestee, after waiving that right, elects to reassert it, questioning must cease immediately and no further questioning may be conducted unless:
 - a. An attorney representing the arrestee is present, or
 - b. The arrestee voluntarily initiates a further interview.
5. If the arrestee has not waived his or her Miranda rights, then even though the arrestee is not being directly questioned, officers shall refrain from engaging in conversation among themselves, in the presence of the arrestee, that is calculated to elicit incriminating statements or admissions from the arrestee.

J. Transportation of Arrestee (See Department Policy on Prisoner Transportation # 3-7)

1. All arrestees shall be searched before being transported.
2. All arrestees shall be handcuffed or otherwise restrained during transportation in accordance with departmental policy.
3. Before an arrestee is transported, the area of the transporting vehicle to be occupied by the arrestee shall be searched for articles, including articles that may have been left behind by previous arrestees that may present a hazard to the transporting officers.
4. Security devices in the transporting vehicles, such as door locks and security screens, shall be checked to be certain that they are operating properly.
5. Officers shall seat arrestees in the vehicle in accordance with departmental policy.
6. All arrestees shall be safely restrained with seatbelt.

K. Off-Duty Arrests (See Department Policy on Off-Duty Arrests # 3-3)

L. Arrest of Juveniles (See Department Policy on Juveniles # 5-6.)

1. All officers shall be aware that the arrest, transportation and booking of juveniles are subject to special legal requirements.
2. Officer shall be familiar with and observe these special requirements at all times when arresting juveniles.

M. Arrest of Department Members

When arresting a member of their own department, officers shall:

1. Take all precautions and follow all procedures as provided by departmental policy.
2. Notify the arresting officer's supervisor of the arrest of a departmental member.
3. Immediately notify the Operations Bureau Commander or Chief of the arrest of a departmental member.

N. Other Options in Lieu of Arrest

1. Officers can issue non-custodial misdemeanors in lieu of arrest in all situations where it is directed by law. In situations where non-custodial misdemeanors is discretionary, officers shall consider the following:
 - a. Whether the person is likely to disregard the misdemeanor.
 - b. Whether the person, if cited and released, is likely to cause harm to himself or herself or any other person.
 - c. Whether there are other factors that should be considered and are permitted by law and departmental policy. (See Department Policy on Police Discretion # 3-8)

O. Release after Arrest

1. If, after an arrest, it becomes apparent that there is no probable cause to hold the arrestee, the arrestee must be released. The arresting officer must do the following:
 - a. The decision to release is addressed with a supervisor prior to release.
 - b. The officer must ensure that the person is released at a safe location and is not otherwise placed at risk as a result of the incident. If necessary, police should provide transportation for the released person to a safe location.
 - c. Any record of arrest of a person released must include a record of release that classifies the incident as a "detention" rather than an arrest.
 - d. The officer must write a detailed written report outlining the circumstances of the "detention" and the release of the individual.

P. Investigative Detention versus Arrest (See Department Policy on Field Interviews And Pat Downs # 3-9)

1. All officers shall be aware of the distinction between investigative detention and arrest.
2. Officers shall conduct an investigative detention based upon articulable reasonable suspicion that the person detained has committed, is committing, or is about to commit a crime.
3. Officers shall not prolong the investigative detention beyond the period necessary to accomplish the purpose of the detention. Officers shall be aware that prolonging an investigative detention unnecessarily may cause a court to view the detention as an actual arrest.
4. Officers shall take precautionary measures for their own safety during an investigative detention, including display of firearms or handcuffing the detainee. Officers shall be aware that unnecessary or prolonged display of firearms, handcuffing and so on during the investigative detention may cause a court to view the detention as an actual arrest.

5. Officers who reasonably believe that a person under investigative detention may pose a threat to their safety or safety of others, shall conduct a frisk or pat-down search of the detainee's clothing for weapons. Officers shall not conduct any further search of an investigative detainee unless and until it appears that there is probable cause for the arrest of the detainee.
6. If during the investigative detention, it becomes apparent that there is probable cause to believe that the detainee has committed a criminal offense, the detainee shall then be placed under arrest and the procedures for arrest set forth in this policy, including the procedures for a search incident to an arrest, shall then be followed by the arresting officers.

Q. Arrests by Probationary Police Officers Prohibited

1. Newly hired probationary police officers will not be allowed to make any arrests until they have completed their training as required by the Police Officer Standards and Training Council (POSTC).